

OFFICIAL FILE
ILLINOIS COMMERCE COMMISSION
Illinois Bell Telephone Company)
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-vs-

1-800-RECONEX, Inc., et. al.,

Complaint pursuant to Section 10-108 of
the Illinois Public Utilities Act 220 ILCS
5/10-108 and 83 Illinois Administrative
Code 200.170.

ORIGINAL
ILLINOIS
COMMERCE COMMISSION
Docket No. 04-0606
2004 NOV -1 A 10:33
CHIEF CLERK'S OFFICE

EASTON TELECOM SERVICES, LLC'S
MOTION TO DISMISS AMENDED COMPLAINT

Easton Telecom Services, LLC ("Easton Telecom"), by its attorneys, moves pursuant to 83
Administrative Code 200.190 for dismissal of the Amended Complaint of Illinois Bell Telephone
Company ("SBC"). In support of it motion, Easton Telecom represents as follows:

1. The amended complaint, as with similar complaints filed by SBC in Nevada, Ohio,
Kansas and Michigan, seeks to amend interconnection agreements between SBC and competitive
local exchange carriers who were not even provided with a copy of the proposed amendment before
receiving it as an attachment to SBC's complaints. Easton Telecom first saw the proposed
amendment on receiving it as attachment B to the complaint. It is self-evident from the proposed
amendment that it contains references to the FCC's Interim Order of August 20, 2004 and so could
not have been circulated as a proposed amendment and made the subject of a completed dispute
resolution proceeding under the parties' interconnection agreement before SBC's complaint was
filed with this Commission.

2. The interconnection agreement between SBC and Easton Telecom provides that in
the event of a change of law, a party may propose an amendment to the interconnection agreement
and must negotiate the same for a period of up to sixty (60) days, after which either party may resort
to dispute resolution proceedings. In the case of Easton Telecom, no change of law proposal and

no dispute resolution proceeding regarding attachment B to the complaint were even initiated by SBC and of course were not completed prior to the filing of SBC's complaint with the Commission. Until these procedures have been followed the Commission is without jurisdiction to arbitrate amendments to the interconnection agreement. The Commission may not lawfully entertain such a case. *Pacific Bell v. Pac West Telecomm, Inc.*, 325 F.3d 1114, 1127 (9th Cir. 2003) (state utility commissions may not issue "generic" orders applicable to all interconnection agreements and promulgated without reference to the specific terms contained in any particular interconnection agreement). SBC could have initiated change of law and dispute resolution proceedings and if necessary petitioned this Commission under 47 U.S.C. 252 (b)(2)(A) but is has instead chosen to skip every step required to confer jurisdiction on the Commission.

3. Contrary to SBC's allegations, the FCC has not called upon or directed parties or Commissions to bypass change of law and dispute resolution procedures incorporated into individual interconnection agreements. The operative language in the FCC Interim Order, in paragraph 22, instead reads as follows:

In order to allow a speedy transition in the event we ultimately decline to unbundle switching, enterprise market loops, or dedicated transport, we expressly preserve incumbent LECs' contractual prerogatives to initiate change of law proceedings to the extent consistent with their governing interconnection agreements. (emphasis added)

4. The FCC has not encouraged a rush to mass litigation before Commissions but instead has discouraged such actions, including the following language in paragraph 17 of the Interim Order:

...whether competitors and incumbents would seek resolution of disputes arising from the operation of their change of law clauses here, in federal court, in state court, or at state public utility commissions, and what standards might be used to resolve such disputes, is a matter of speculation. What is certain, however, is that such litigation would be wasteful in light of the Commission's plan to adopt new permanent rules as soon as possible. (emphasis added)

5. Contrary to SBC's allegations (and proposed interconnection agreement amendment) that many new rules relieving SBC of unbundling obligations must be put into effect immediately, *the FCC has said nothing of the kind in the Interim Order, and instead only set forth limitations on changes to interconnection agreements pending the FCC's issuance of new rules, at paragraph 22 above and at paragraph 21 of the Interim Order:*

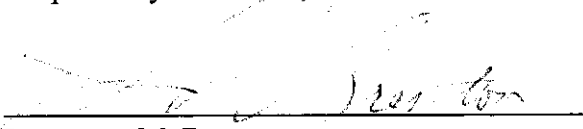
Specifically, we require that between the effective date of this Order and the effective date of the permanent unbundling rules that the Commission plans to issue before the close of 2004, incumbent LECs shall continue providing unbundled access to switching, enterprise market loops, and dedicated transport under the rates, terms and conditions that applied under their interconnection agreements as of June 15, 2004. These rates, terms, and conditions shall remain in place until the earlier of the effective date of final unbundling rules promulgated by the Commission or six months after Federal Register publication of this Order, except to the extent that they are or have been superseded by (1) voluntarily negotiated agreements, (2) an intervening Commission order affecting specific unbundling obligations (e.g., an order addressing a pending petition for reconsideration), or (3) (with respect to rates only) a state public utility commission order raising the rates for network elements. These interim requirements will only remain in place for six months after Federal Register publication of this Order, by which time we intend to issue permanent rules. (emphasis added)

6. The filing of a complaint with this commission prior to even initiating, much less exhausting, dispute resolution procedures under the interconnection agreement between the parties violates controlling federal law, the interconnection agreement itself, the FCC's Interim Order and the rules of this Commission. This Commission lacks jurisdiction to hear the SBC complaint.

WHEREFORE, Easton Telecom respectfully requests that SBC's Amended Complaint be dismissed.

Dated: October 27, 2004

Respectfully submitted,



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STATE OF MICHIGAN)

COUNTY OF KALAMAZOO)

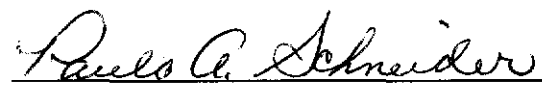
Verification

I, Lawrence M. Brenton, being first duly sworn, depose and state that I am counsel for Easton Telecom Services, LLC and that I have read the foregoing Motion to Dismiss Amended Complaint, know the contents thereof and that the statements therein contained are true, to the best of my knowledge, information and belief.



Lawrence M. Brenton

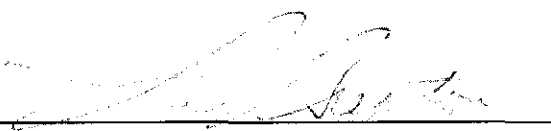
Subscribed and Sworn
to before me this 29th
day of October, 2004.



Notary Public: Paula A. Schneider
Kalamazoo County, MICHIGAN
Acting in Kalamazoo County
My Commission Expires: June 24, 2011

Certificate of Service

I hereby certify that, on this 29th day of October, 2004, copies of the foregoing Motion to Dismiss were served either electronically or by first-class mail, postage prepaid, upon all parties on the service list.



Lawrence M. Brenton